Plaintiff also relies on the settled and well-known rules of law with regard to the title to personal property expressed by the then Lord Chancellor, Lord Cairns, in *Cundy vs. Lindsay*[1] as follows:—

> By the law of our country the purchaser of a chattel takes the chattel as a general rule subject to what may turn out to be certain infirmities in the title. If he purchases the chattel in market overt, he obtains a title which is good against all the world; but if he does not purchase the chattel in market overt, and if it turns out that the chattel has been found by the person who professed to sell it, the purchaser will not obtain a title good as against the real owner. If it turns out that the chattel has been stolen by the person who has professed to sell it, the purchaser will not obtain a title. If it turns out that the chattel has come into the hands of the person who professed to sell it, by a **de facto** contract, that is to say, a contract which has purported to pass the property to him from the owner of the property, there the purchaser will obtain a good title, even although afterwards it should appear that there were circumstances connected with that contract, which would enable the original owner of the goods to reduce it, and to set it aside, because these circumstances so enabling the original owner of the goods, or of the chattel, to reduce the contract and to set it aside, will not be allowed to interfere with a title for valuable consideration obtained by some third party during the interval while the contract remained unreduced.

The piano was sold in the first instance, insofar as we know, by one Macartney, a Welfare Officer, dressed in a military type of uniform, on the 10th April, 1946, at the Salvation Army Club in Burmah Road, Penang to a photographer, one Sheik Sulieman Rafee of 235, Burmah Road for $175/-. He, finding that repair of the piano would cost too much, re-sold to the defendant company for $330/-, and handed over the receipt given to him by Macartney.

There was never any contract whereby the ownership or possession of the piano was passed by the plaintiff. Being private personal property it did not pass to the occupying power, nor after the enemy occupation period, to members of the relieving forces. Whether it was removed from 9, Lim Mah Chye Road by the Japanese troops or by the Allied Forces on re-occupation or looted by any other unauthorised person, the original purchaser and the defendant company had every reason to suspect that there was not a good title to the ownership in the seller. In short the piano was not purchased in good faith without knowledge of the defective title. But even had it been removed and sold by any person other than the pre-occupation tenant or his duly constituted agent, the plaintiff is empowered under the Leases and Tenancies (War Absentees) Adjustment Ordinance to follow and recover it notwithstanding that the person in whose possession it is found may be a bona fide purchaser for value.

It is therefore ordered that the piano in question be returned to the plaintiff forthwith and that the defendant company do pay the plaintiff's costs of this suit.

The claim for damages for detention having been dropped, none are awarded.

There was no formal set-off or counterclaim by the defendant company and so no order for payment for work and labour done and materials supplied can be made, but plaintiff's counsel has intimated that his client is still willing to pay $150/- to the defendant company in respect of these items. In view of the evidence of the condition of the piano when sold by Macartney and now, I am satisfied that considerable work was successfully done on it. Perhaps on further examination of the piano the plaintiff may be disposed slightly to increase this payment.

*Order Accordingly.*

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## *IN RE* KIM CHWEE CHIA.

[Orig. Civil Juris. (Willan, C.J.) June 21, 1947]

*Advocates and Solicitors Ordinance 1947, Section 5.—Whether period during which a petitioner has attended and received instruction in law prior to filing his petition can count against the period required by Sub-section 3 of Section 5 of the Ordinance—Application to shorten Statutory period required by Sub-section 3 of Section 5 of the Ordinance and to shorten the period during which the notice referred to in Sub-section (2) of Section 5 of the Ordinance is required to be posted.—What special grounds are contemplated by Sub-section 5 of Section 5 of the Ordinance.*

The Petitioner in his Petition for Admission applied to the Court under Sub-section 5 of Section 5 of the Advocates and Solicitors Ordinance, 1947 to (a) shorten the time during which the notice referred to in Sub-section (2) of Section 5 is required to be posted; and (b) shorten the period during which the petitioner is required to attend and receive instruction in law in an office in the Malayan Union of a practising practitioner of not less than seven years' standing at the Bar of the Federated Malay States or one of the Straits Settlements or of the State of Johore or of the Malayan Union or any two or more of such Bars. The petitioner, a barrister of England, had read in the Chambers of a practising barrister in England for six months and had attended and received instruction in law as required by Sub-section (3) of Section 5 of the Ordinance for a period of almost eleven months. The petitioner had also served as a barrister at law in the Civil Affairs (Malaya Planning Unit) in London, in the British Military Administration, Malaya, and in the Government of the Malayan Union. The last of the notices required to be posted under Sub-section (2) of Section 5 of the Ordinance was in this case, posted on the 8th of March 1947.

**Held,** (1) that the period during which the petitioner has attended and received instruction in law prior to filing his petition could count against the period required by Sub-section (3) of Section 5 of the Ordinance and that, therefore, the application in this matter to shorten the Statutory period required by Sub-section (3) of Section 5 of the Ordinance is unnecessary, since the petitioner has attended and received instruction in law in the office in the Malayan Union of an Advocate and Solicitor of not less than seven years' standing at the Bar of the Federated Malay States for more than the statutory period of 6 months;

(2) that in applications under Sub-section (5) of Section 5 of the Ordinance there must be at least two special grounds, and except in exceptional cases, one of these grounds must be that the petitioner has been engaged in a part of His Majesty's Dominions in the active practice of the profession after having qualified as a barrister of England or as the case may be.

(3) that in this case the petitioner has satisfied this ground of being in the active practice of the profession and that there is also the further special ground that the petitioner would have filed his petition immediately after the 24th July 1946, the date on which he ceased to work for the Malayan Union Government, if the Advocates and Solicitors Ordinance 1947 had then been in force and therefore the petitioner was entitled to an order that the period of six months during which the notices are required to remain posted under Sub-section (2) of Section 5 of the Ordinance be shortened by dispensing with the unexpired period of the said period.

**Held also, obiter** (1) that the test to be applied to the second special ground which must be adduced to shorten or dispense with the period during which a petitioner shall attend and receive instruction in law in the office of a local Advocate and Solicitor, is whether it is certain that the petitioner has sufficient experience in the local law which would enable him to take the necessary responsibility for advising or otherwise acting professionally for clients, for reward, as an officer of the Court; (2) that the test to be applied to the second special ground which must be adduced to shorten the period during which the notices referred to in Sub-section (2) of Sub-section 5 must remain posted, is that it should relate to some matter of urgency.

*Cases referred to :—*

(1) *In re Ahmad bin Mohamed Ibrahim* (1946) 12 M.L.J. lxi.

(2) *In re Richard Chuan Hoe Lim* (1936) S.S.L.R. 166; 5 M.L.J. 268.

PETITION FOR ADMISSION.

*K. K. Benjamin* for the Petitioner.

*R. Ramani* for the Bar Council of the Malayan Union.

**Willan, C. J. :**—In his Petition for Admission to practise as an Advocate and Solicitor the petitioner, Kim Chwee Chia, under the provisions of sub-section (5) of section 5 of the Advocates and Solicitors Ordinance, 1947, prays the Court to:—

(a) shorten the time during which the notice referred to in sub-section (2) of section 5 is required to be posted;

(b) shorten the period during which the petitioner is required to attend and receive instruction in law in an office in the Malayan Union of a practising practitioner of not less than seven years standing at the Bar of the Federated Malay States, or one of the Straits Settlements, or of the State of Johore, or of the Malayan Union or of any two or more of such Bars.

These two prayers can only be acceded to under sub-section (5) of section 5 of the Ordinance, that is to say "on special grounds". The special grounds urged in this matter are four, namely :—

(1) That the petitioner has fulfilled the requirements of sub-section (3) of section 5 of the Ordinance and that four months have elapsed since the notices required to be posted by sub-section (2) of section 5 were filed by the petitioner.

(2) His experience gained in the laws of the Malayan Union when, between 1940 and 1942, he prepared a dissertation which compared the mercantile law of England with those of Malaya and which gained for the petitioner a Diploma in Comparative Legal Studies from the University of Cambridge :

(3) His academic qualifications in law;

(4) His service, as a barrister-at-law, in the Civil Affairs (Malaya Planning Unit) in London, in the British Military Administration, Malaya, and in the Government of the Malayan Union.

At the hearing the petitioner was represented by Mr. Benjamin, and Mr. Ramani appeared for the Bar Council of the Malayan Union. The local Bar Committee of Selangor and Negri Sembilan were not represented but, at the hearing, Mr. Ramani handed in a letter which discloses that that Committee is opposed to this application on the ground that sub-section (5) of the section 5 of the Ordinance requires at least two special grounds and that of the four grounds urged in support of this application only number (4), set out above, is a good ground.

At the hearing Mr. Benjamin, on behalf of the petitioner, urged another special ground, namely, that the petitioner could and would have filed his petition earlier but was unable to do so because the Advocates and Solicitors Ordinance, 1947, did not come into force until the 17th day of February, 1947.

The facts are :—

(a) The petitioner is a barrister of England;

(b) He has read in Chambers of a practising barrister in England for six months;

(c) He has attended and received instruction in law as required by sub-section (3) of section 5 of the Ordinance since the 25th July, 1946, to date, that is for a period of almost eleven months;

(d) The last of the notices required to be posted under sub-section (2) of section 5 of the Ordinance was posted on the 8th March, 1947.

In view of the qualifications set out in (a) and (b) the period during which the petitioner is required to attend and receive instruction in law in the Malayan Union, as required by sub-section (3) of section 5 of the Ordinance, is six months. One of the questions raised by Mr. Ramani and which I am required to decide is whether, as in this case, any period during which a petitioner has attended and received instruction in law prior to filling his petition can count against the period required by sub-section (3) of 5 section of the Ordinance. If it can, then the petitioner has more than completed the six months required by that sub-section, and no application to shorten that period is necessary; if it cannot, then only the period since the filling of his petition on the 26th February, 1947, can count, i.e. a period of approximately four months, against the statutory period of not less than six months..

As regards this question, Mr. Ramani brought to my notice the ruling of the learned Chief Justice of the Colony of Singapore (1) referred to at page xiii in 12 Malayan Law Journal. In a matter before him, in which this identical question arose, the Chief Justice of Singapore ruled that the period spent by a petitioner in the office of an Advocate and Solicitor in Singapore prior to the petitioner's call to the Bar of England counted against the statutory period during which the petitioner is required to attend and receive instruction in the local law. The learned Chief Justice is reported as having made this ruling for the reason that he could find no express provision in the Singapore Advocates and Solicitors Ordinance to show that the accepted practice of students reading in Chambers before their call to the Bar should only apply to England and should not apply to the Colony of Singapore. Since the Malayan Union Advocates and Solicitors Ordinance, 1947, equally contains no express provision prohibiting the English practice, I make the same ruling here for the same reason, particularly as the petitioner in this matter attended and received such instruction after his call to the Bar.

Accordingly the application in this matter to shorten the statutory period required by sub-section (3) of section 5 of the Ordinance is unnecessary, since the petitioner has attended and received instruction in law in an office in the Malayan Union of an Advocate and Solicitor of not less than seven years' standing at the Bar of the Federated Malay States for more than the statutory period of 6 months.

I now deal with the application to shorten the period during which the notice referred to in sub-section (2) of section 5 of the Ordinance is required to be posted. By sub-section (4) of that section no petition can be set down for hearing until the expiration of at least six months from the date of the posting of the last of the notices referred to in sub-section (2) of that section. In the matter now before me the last of such notices was posted on the 8th March, 1947, and therefore, in the absence of any abridgment of time, the petition cannot be set down for hearing before 8th September 1947.

It is clear from the words in sub-section (5) of section 5 of the Ordinance "on special grounds, one of which may be" that there must be at least two special grounds. That sub-section only gives guidance as to what one of those special grounds may be, namely that the petitioner has been engaged in any part of His Majesty's dominions in the active practice of his profession after, as in this petitioner's case, having qualified as a barrister of England. From the papers filed in this petition I am satisfied that the petitioner has fulfilled that special ground, and this is not disputed by the Local Bar Committee of Selangor and Negri Sembilan. But the petitioner must adduce at least one more special ground. I agree with the contention of the Bar Committee of Selangor and Negri Sembilan that none of the other three grounds advanced by the petitioner in his application and which are set out at the beginning of his judgment, is a sufficient special ground required by sub-section (5) of section 5 of the Ordinance. In my view no petitioner can advance as a special ground his academic qualifications in law, because without such qualifications he has no right to file any petition at all. Nor can a petitioner urge as a special ground, as he has done in this matter, any particular academic legal knowledge or qualifications.

In my view sub-section (5) of section 5 of the Ordinance, although it states that one of the special grounds *may* be that the petitioner has been engaged in any part of His Majesty's dominions in the active practice of his profession as barrister of England etc., contemplates that, except in exceptional cases, the petitioner should have fulfilled that requirement as one of his special grounds.

On the hearing of this matter I was invited by Mr. Ramani to indicate generally, for the guidance of the Malayan Union Bar Council, what special grounds are contemplated by sub-section (5) of section 5 of the Ordinance. This is a difficult request to fulfil because, apart from the fact that each particular application under that sub-section must depend on its own set of circumstances, the special grounds relate to two separate and distinct matters, namely :—

(1) The shortening of the period during which a petitioner is required to attend and receive instruction in law in the office of a local Advocate and Solicitor; and

(2) The shortening of the period during which the notices referred to in sub-section (2) of section 5 must remain posted.

With regard to the special ground expressly indicated in sub-section (5) of section 5, i.e. that the petitioner has been engaged in the active practice of his profession as a barrister etc., I have already indicated that, in my view, this is almost a mandatory provision, and this special ground is one which can be put forward to support an application for the shortening of the statutory periods for either or both of the matters just mentioned.

But this is not enough. There must, as I have already ruled, be another special ground.

I would say, and in so saying I wish it to be taken as an obiter dictum and not as a decision or a ruling, that the test to be applied to the second special ground which must be adduced to shorten or dispense with the period during which a petitioner shall attend and receive instruction in law in an office of a local Advocate and Solicitor, is whether it is certain that the petitioner has sufficient experience in the local law which would enable him to take the necessary responsibility for advising or otherwise acting professionally for clients, for reward, as an officer of the Court. I take this from the judgment in the case of *In the Matter of Richard Chuan Hoe Lim*[2] because it expresses my own views on this matter.

As regards the test to be applied to the second special ground which must be adduced to shorten the period during which the notices referred to in sub-section (2) of section 5 must remain posted, I would say that this should relate to some matter or urgency. For instance a partner in a firm of Advocates and Solicitors has had a sudden break-down in health and it is necessary, as a matter of urgency, that the work done by him be taken over in order to do justice to the affairs of the clients, it having been clearly shown that such affairs could not be looked after satisfactorily otherwise. I concur, however, with the learned judge, where he states in the judgment in the case referred to above,

> I do, however, agree that the mere fact that a partner in a firm has elected to go on leave at some particular time cannot of itself be good ground for dispensing with the requirements of the section.

Having indicated my opinion on these two matters at the request of Mr. Ramani for the guidance of the Bar Council, I now proceed to deal with the second special ground which, in addition to the special grounds set out earlier in this judgment, was urged upon me by Mr. Benjamin on behalf of the petitioner at the hearing. That is, that the petitioner would have filed his petition immediately after the 24th July, 1946, the date on which he ceased to work for the Malayan Union Government, if the Advocates and Solicitors Ordinance, 1947, had then been in force. If that ordinance had been in force at that date the petitioner would been admitted several months ago. This, in my view, is a special ground which should be taken into account under sub-section (5) of section 5 of the Ordinance and I do take it into account. It is, of course, a special ground of a very temporary nature and can only be taken advantage of by the petitioner, and other petitioners in the same position as himself.

Accordingly I order that the period of six months during which the notices are required to remain posted under sub-section (2) of section 5 of the Ordinance be shortened by dispensing with the un-expired portion of the said period. In view of my finding earlier on the question of the period regarding local instruction, this means that the petitioner may now proceed to apply to have his petition set down for hearing.

I am requested by Mr. Ramani, on behalf of the Bar Council, to give a ruling on the respective duties of the Bar Council and a Local Bar Committee on an application such as this, because Mr. Ramani does not consider that the law on this matter, particularly sub-section (4) of section 6 of the Ordinance, is sufficiently explicit. I refrain from doing so because I consider that if there is a doubt on this it could be resolved by discussion first in the Bar Council and then, if necessary, the law can be amended.

*Order Accordingly.*